

RESOLUTION NO. 92-116
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A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING A CONTRACT WITH THE COUNTY OF SAN JOAQUIN
FOR DATA PROCESSING SERVICES FOR THE LODI POLICE DEPARTMENT
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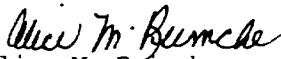
RESOLVED, that the Lodi City Council does hereby approve an agreement (Exhibit A) with the County of San Joaquin to provide data processing services for Lodi Police Department operations; and

FURTHER RESOLVED, the City Manager and Clerk are hereby authorized to execute said agreement on behalf of the City of Lodi.

Dated: July 1, 1992
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I hereby certify that Resolution No. 92-116 was passed and adopted by the Lodi City Council in a regular meeting held July 1, 1992 by the following vote:

Ayes: Council Members - Hinchman, Sieglock, Snider and
Pinkerton (Mayor)
Noes: Council Members - None
Absent: Council Members - Pennino


Alice M. Reimche
City Clerk

92-116

RES92116/TXTA.02J

AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of July, 1992, by and between the COUNTY OF SAN JOAQUIN, through its Data Processing Division, hereinafter referred to as "COUNTY" and CITY OF LODI, hereinafter referred to as "CITY";

WITNESSETH:

WHEREAS, COUNTY provides the following services to CITY: Access to Automated Message Switching/CJIS Systems; and

WHEREAS, COUNTY has certain data processing equipment and is able to provide data processing services which CITY desires to use in its operations;

WHEREAS, COUNTY'S Data Processing Division services offered to City under this Agreement differs from that provided in previous years and it is necessary to set out the understanding of the parties as to the extent of services and liability for provision of access to the message switching system for local criminal information.

IT IS HEREBY AGREED between the parties as follows:

1. SERVICE FOR ACCESS TO NON-REDUNDANT, NON-FAULT TOLERANT MESSAGE SWITCH SYSTEM

The COUNTY shall provide access to CITY to the automated message switch system of COUNTY'S Data Processing Division to provide local Criminal Justice information. The parties expressly acknowledge that the Data Processing Division message switch system is a non-fault tolerant, non-redundant system which does not provide continuous access seven (7) days a week and twenty-four (24) hours a day. The message switch system may go down and be unable to provide responses at any time of day or night for undeterminable periods of time and also must be scheduled to be taken down for maintenance and repairs from time to time. Therefore, COUNTY does not represent that the service provided under this Agreement will enable CITY to receive a response from the message switch system within any specific time period. CITY has considered the express limitations set forth in this Agreement of the message switch system, together with the needs of CITY, and has determined that CITY'S business operations require the use of the services set out in this Agreement.

2. COMPENSATION

- a. COUNTY will provide the services and equipment for the estimated annual amount of compensation as shown in Attachment "A". The total services and equipment which CITY may utilize pursuant to this agreement shall not exceed that which has been set forth in Attachment "A". The total maximum compensation to COUNTY pursuant to this agreement shall not exceed \$5,317.00 per fiscal year. COUNTY shall bill CITY only for actual services performed and equipment provided, one month after services are performed and equipment is provided. CITY shall provide full payment to COUNTY of the billed amount by the fifteenth day of the date of billing. In the event payment is not made in accordance with this provision COUNTY may, at its option, terminate the agreement in accordance with the provisions of Paragraph 5.

- b. In the event that COUNTY'S cost of services and equipment is increased due to any reason, COUNTY may increase the rate of compensation (which may also result in the estimated annual amount of compensation provided herein to be increased) for services and equipment provided herein upon COUNTY so notifying CITY, in writing, no less than thirty (30) calendar days in advance of the intended change of rate of compensation. CITY shall be allowed the option to terminate this agreement in accordance with the provisions of Paragraph 5 in the event of an increase in the rate of compensation.

3. OPTIONAL SERVICE AND EQUIPMENT

Service and equipment under this agreement are limited solely to the ongoing services, systems, and equipment listed in Attachment "A" which are in operation on the effective date of this agreement. Services and equipment not covered in this agreement may be provided to CITY at COUNTY'S option subject to the following conditions:

- (a) CITY must submit a written request for the additional services and/or equipment which has been signed by the appropriate agency official, and
- (b) Additional services, and/or equipment shall be provided at the current rates of compensation and shall be billed as additional items over and beyond the total estimated annual amount compensation designated in this agreement.

Maintenance in connection with the equipment provided under this agreement is included in the rate of compensation for equipment and will not be billed as an additional charge to CITY.

4. TERM

The term of this contract shall be one year beginning July 1, 1992, and ending June 30, 1993.

5. TERMINATION

- a. This contract may be terminated by either party upon thirty (30) calendar days advance written notice to the other party. Notwithstanding such termination, CITY shall compensate COUNTY for the actual services performed and equipment provided through the date the termination of the contract is effective. If CITY fails to timely compensate COUNTY as provided in this contract, CITY shall be held liable for the reasonable cost of collecting such compensation including attorneys fees and court costs incurred by COUNTY. In no event shall COUNTY be liable for reimbursing CITY for the costs to procure alternative services to those services provided under this Agreement regardless of whether CITY or COUNTY initiates termination of the Agreement.
- b. All rental equipment in the possession of CITY shall be returned to COUNTY in the same condition as it was delivered to CITY, less normal wear and tear. COUNTY shall be compensated by contractor for all loss or damage to said equipment which is not the result of a willful or negligent act by COUNTY and which does not constitute normal wear and tear.

6. INDEMNIFICATION AND HOLD HARMLESS

The CITY agrees that it shall indemnify, defend and hold harmless the COUNTY, the members of its Board of Supervisors, its officers, agents, and employees, from and against all demands, claims, damages, losses, expenses, and costs including attorneys' fees and court costs arising out of and/or resulting from the performance of the activities and services contemplated by this agreement, except for demands, claims, damages, losses, expenses, and costs resulting from the sole and exclusive negligence of the COUNTY, or its agents, or those brought by employees or agents of COUNTY concerning their employment or agency relationship.

7. LIMITATIONS OF LIABILITY

In no event shall COUNTY be responsible for any damage, compensatory, consequential, punitive, or special in the event that the CITY is unable to receive a response for a request for access and information through the automated message switching system of COUNTY. This Agreement shall not be construed to be either a representation or a warranty to CITY that it will be able to access and receive a response through the automated message switch at any particular time or within any particular response time. COUNTY does not grant any warranty as to the validity, completeness or usefulness of any information received by CITY through the automated message switch/CJIS systems. COUNTY shall not be responsible nor liable for the costs to CITY to procure alternative services to the services provided for under this Agreement or upon termination of this Agreement by either party.

In the event of errors in data processing results due to the failure of COUNTY'S equipment, software, circumstances beyond the control of COUNTY, or the failure of COUNTY'S employee(s) to operate the equipment in accordance with COUNTY'S standard operating procedures, or COUNTY'S inability to provide data processing services due to circumstances beyond its control. COUNTY'S liability shall be limited to either subparagraph (a) or (b) below, either of which will be considered to be CITY exclusive remedy:

- (a) The correction of errors of which COUNTY has received written notice and proof or the performance of the service, whichever is the situation; or
- (b) Where such correction or performance of service is not practicable, CITY shall be entitled to an equitable credit not to exceed the charges invoiced to CITY for that portion of the service which produced the erroneous result or for that portion of the service which could not be performed, whichever is the situation.

COUNTY shall be liable for the loss, destruction or damage to CITY supplied materials only if such loss, destruction, or damages was due to the negligence of COUNTY and CITY sole remedy shall be COUNTY restoring the same, provided such restoration can be reasonably performed by COUNTY and provided that CITY provides COUNTY with all source data necessary for such restoration in similar form to that normally presented to COUNTY under this Agreement.

8. INDEPENDENT CONTRACTOR

The CITY, and the agents and employees of CITY, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of COUNTY.

9. ASSIGNMENT

Without the written consent of COUNTY, this agreement is not assignable by CITY either in whole or in part.

10. TIME OF THE ESSENCE

Time is the essence of this agreement.

11. MODIFICATIONS

No alteration, variation, or modification of the terms of this contract shall be valid unless made in writing prior to the effective date and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

12. COMPLIANCE WITH LAWS

CITY shall comply with the California Fair Employment Practices Act (Labor Code Section 1410, et seq.) and any amendments thereto.

This contract may, at the option of COUNTY, be terminated or suspended in whole or in part in the event CITY fails to comply with the nondiscrimination clause of the contract. In the event of termination under this paragraph, COUNTY shall be compensated for goods and services provided to the date of termination. Termination or suspension shall be effective upon receipt of written notice thereof.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first written above.

COUNTY OF SAN JOAQUIN, a
political subdivision of the State of
California

By _____
MEL WINGETT
County Administrator

"COUNTY"

CITY OF LODI

By Thomas A. Peterson
Thomas A. Peterson

Title City Manager

"CITY"

Attest: _____
Alice M. Reimche
City Clerk

APPROVED AS TO FORM:
JOHN CHEADLE
County Counsel

By _____
REBECCA A. DAVIS
Deputy County Counsel

Approved as to form:

Bob McNatt
Bob McNatt
City Attorney

ATTACHMENT A

CITY OF LODIA. Estimated Annual Cost of Services and Equipment

<u>1.</u>	<u>Teleprocessing Transactions</u>	<u>ANNUAL COST</u>
	An average 80,000 transactions per year at \$.054 each	\$ 4,320.00
2.	Color Terminal Maintenance	\$ 72.00
3.	Printer Maintenance	\$ 480.00
4.	Modem Maintenance	\$ 135.00
5.	Remote Controller Maintenance	\$ 200.00
6.	Telephone Line Charge	<u>\$ 110.00</u>

TOTAL \$ 5,317.00